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## THE ANTARCTIC TREATY

An Analysis of the Provisions of an Extraordinary  
International Treaty Up for Ratification  
by Twelve Countries

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Cambridge, England  
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Signed on December 1, 1959 in Washington, an extraordinary international treaty is now being examined for ratification by the governments of 12 countries, including the United States and the Soviet Union.

Included in this treaty, which has provisions for the governing of an entire continent, covering almost exactly ten per cent of the earth's land area, are important principles of complete nonmilitarization and the banning of all nuclear explosions.

These agreements, reached after months of patient negotiations initiated by the United States Department of State, may well provide the basis for important future international accords on such topical subjects as general disarmament and space.

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### THE ANTARCTIC TREATY

On December 1, 1959, following a six-week conference, 12 nations signed in Washington a 30-year treaty, unique in modern diplomatic history. The Antarctic Treaty, which was first negotiated during a series of preparatory meetings held in 1958-1959, applies to an entire continent, 14 million square kilometers in extent--larger than all of Europe and the United States combined.

An interesting aspect of the Treaty reflects the fact that it is the only important multilateral convention signed by both the United States and the Soviet Union since World War II except for the Treaty setting up the International Atomic Energy Agency. In the Antarctic Treaty are provisions, which may well lead to further international agreements on what have been in the past extremely knotty problems, such as space and general disarmament.

Major stipulations of the Treaty contain the following principles governing future national activities in Antarctica: (i) guaranteed nonmilitarization, (ii) prohibition of all nuclear explosions, (iii) the freezing of all national territorial claims and rights, (iv) an unprecedented system of unilateral inspection of any part of Antarctica by observers of any signatory nation, (v) the reservation of Antarctica for peaceful purposes only, and (vi) the continuance of the international scientific co-operation which characterized the 1957-1958 International Geophysical Year (I.G.Y.).

The Conference called to draft the Treaty was convened on the initiative of the United States Government. On May 3, 1958, President Eisenhower, in announcing the dispatch of diplomatic notes simultaneously to 11 countries inviting them to participate in a treaty conference, stated: "The United States is dedicated to the principle that ... Antarctica... shall be used only for peaceful purposes." To keep Antarctica from becoming "an object of political conflict... the United States has invited eleven other countries, including the



Soviet Union,<sup>1</sup> to confer with us to seek an effective joint means" of keeping Antarctica "open to all nations to conduct scientific or other peaceful activities there" under "joint administrative arrangements" which would "ensure the successful accomplishment of these and other peaceful purposes."<sup>2</sup>

The following nations were invited: Argentina, Belgium, Chile, France, Japan, New Zealand, Norway, Union of South Africa, USSR, the United Kingdom and Australia. All were participating in the co-ordinated research program being carried out in Antarctica during the I.G.Y.

After emphasizing the desirability of assuring the continuation of the international scientific co-operation manifested during the I.G.Y., the United States Note argued that such an arrangement could have the "additional advantage of preventing unnecessary and undesirable political rivalries" in Antarctica, as well as avoiding the "uneconomic expenditure of funds to defend individual national interests and the recurrent possibility of international misunderstanding."

The Note included a formula planned to circumvent the obstacle that had defeated earlier proposals for internationalization:<sup>3</sup>

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<sup>1</sup> An earlier unsuccessful proposal by the United States in August 1948 for the internationalization of Antarctica had not been sent to the USSR, but only to those nations more or less active in Antarctic affairs at the time. Although the Soviet Union had not dispatched an expedition to Antarctica since the 1819-1821 cruise of Admiral Bellingshausen (an undeniably important expedition in Antarctic history), it reacted to this omission by announcing in June 1950 that the USSR could not "agree that such a question as the regime for the Antarctic should be decided without their participation." (For text of the official Soviet statement see Pravda, Moscow, June 10, 1950; for an English version see USSR Information Bulletin, Vol. 10, No. 12, June 23, 1950, p. 380.)

<sup>2</sup> For text of President Eisenhower's statement and the United States Note see "U.S. Proposes Conference on Antarctica," Department of State Bulletin, Vol. 38, No. 988, June 2, 1958, pp. 910-912.

<sup>3</sup> The 1948 plan of the United States would have required the surrender of all national claims and rights, with the continent being placed under a United Nations trusteeship arrangement, with the eight interested states as governing authorities. This requirement proved to be completely unacceptable to most of the recipients of the United States proposal. A subsequent counterproposal to this plan, offered by Chile and named the Escudero Proposal, would have created a modus vivendi arrangement outside the United Nations, with a loosely organized international control body, the membership of which would be limited to representatives from each of the participating states. Discussed spasmodically from 1949-1953, this plan also failed to gain sufficient adherents to call a conference. (For text of United States proposal see Department of State Bulletin, Vol. 19, No. 479, September 1948, p. 301.)



"It is believed that such a treaty can be concluded without requiring any participating nation to renounce whatever basic historic rights it may have in Antarctica, or whatever claims of sovereignty it may have asserted. It could be specifically provided that such basic rights and such claims would remain unaffected while the treaty is in force, and that no new rights would be acquired and no new claims made by any country during the duration of the treaty...the legal status quo in Antarctica would be frozen...."

Although reaction to the United States Note in some countries, such as New Zealand, Australia and the United Kingdom, was immediately favorable, considerable heated discussion took place in the South American countries, Argentina and Chile. For example, Chile, in its reply to the United States, stated in reference to the "joint administrative arrangements," mentioned in the Note, its obligation to reject "any system whatever of international administration" for Antarctica.

As the notes of acceptance from several countries were received during May 1958, there was considerable speculation concerning the reply of the USSR. It was received on June 2, and expressed remarkable agreement with the principles laid down in the United States Note. The Soviet memorandum noted "with satisfaction" the successful operation of the I.G.Y., and stated that the Soviet Government "was prepared to render all possible help in the development of international scientific co-operation in the Antarctic in the future." The Soviet reply insisted on the necessity for complete nonmilitarization and freedom of scientific investigation throughout the entire Antarctic region.<sup>4</sup>

After noting that an important aim of the projected international agreement should be the "prevention of any international misunderstanding that could hinder successful scientific investigations in this area," the Soviet Government restated and emphasized the position it had taken on earlier occasions<sup>5</sup> regarding its reservations on the question of territorial claims in Antarctica:

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<sup>4</sup> "The Future of the Antarctic, Text of the Soviet Embassy's Reply to United States State Department, " Soviet News, June 9, 1958.

<sup>5</sup> See for example the Resolution of the Geographical Society of the USSR, February 10, 1949 (Text in Pravda, February 11, 1949, p. 3); the Soviet Note of June 9, 1950 (supra, op. cit., note 1). For detailed discussions of Soviet political and legal attitudes toward Antarctica see Moludtsov, S. V., Sovremennoye mezhdunarodno - pravovoye polozheniye Antarktiki (Present position of the Antarctic in international law), State Publishing House of Juridical Literature, Moscow, 1954; Durdenevsky, V., "Problema Pravovogo Rezhima Pripolyarnykh Oblastei," (The Problem of the Legal Status in the Polar Regions), Vestnik Moskovskogo Universiteta, No. 7, July 1950, pp. 111-114; and Toma, Peter A., "Soviet Attitude Towards the Acquisition of Territorial Sovereignty in the Antarctic," American Journal of International Law, Vol. 50, No. 3, July 1956, pp. 611-626.



"The Soviet Government considers it necessary to state again that it has not recognized and cannot recognize as lawful any separate settlement of the question regarding state jurisdiction over the Antarctic ...the Soviet Government reserves all rights based on the discoveries and explorations by Russian navigators and scientists, including the right to present appropriate territorial claims on the Antarctic."

On June 4, 1958, the Department of State announced that all 11 nations had accepted the United States invitation to participate in the proposed treaty conference. Consultations regarding the draft treaty began almost immediately in Washington. These negotiations, which were conducted during 60 preparatory meetings held during June 13, 1958, and October 13, 1959, were carried on informally, but in complete secrecy, a remarkable performance, which allowed for frank discussion and compromise.

As the Washington talks continued, India submitted for the third time her proposal that the entire subject of Antarctica should be discussed at the United Nations General Assembly. Ambassador Arthur S. Lall, Indian representative to the United Nations, stated in his memorandum:<sup>6</sup>

"In view of the growing interest in and knowledge about the area, and in view of the fact that many countries, including India, are particularly interested in the meteorological aspects and implications of all that happens in Antarctica, it would be appropriate and timely now for all nations to agree and affirm that the area will be utilized for peaceful purposes and for the welfare of the whole world.... The Government of India believe that this limited purpose can be achieved without any nation renouncing such rights as it may claim in Antarctica ...the action proposed can only be taken by the world community as a whole...."

The feeling at Washington was that discussion of the subject by the United Nations would only lead to the formation of extraneous issues by nations not really interested in the subject. As they felt that India's objectives would all be reached by the treaty they were preparing, India's proposal was shelved.

Another significant Antarctic event during the summer of 1958 was the second meeting, held in Moscow, of the internationally organized Special Committee on Antarctic Research (S.C.A.R.).<sup>7</sup> It was at this session of polar scientists that the world learned of the USSR intention to expand its Antarctic exploration and research program at the termination of the I.G. Y. on December 31, 1958.

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<sup>6</sup> United Nations Document No. A/3852, July 15, 1958.



In August 1958 word was received from Geneva that an East-West agreement had been reached with regard to the feasibility of monitoring a cessation of nuclear weapon tests. This news led to some optimism among the participants in the Antarctic talks--there was a feeling that, if an agreement could be completed that would seal off an entire continent from political problems, it could constitute an important step toward peace and weaken nationalistic barriers to agreement on more controversial problems.

The conferees, however, faced a multitude of serious problems: (i) strong nationalist feeling in Argentina and Chile against any solution that would require relinquishment of their Antarctic "territories," (ii) the reluctance of some nations (especially Argentina, Australia, and Chile) to accept any proviso for an administrative body, (iii) opposition by some states to the principle of complete nonmilitarization in Antarctica--with the concomitant rights of inspection, (iv) membership in the treaty conference, with the USSR and Japan urging for the widest possible participation and others insisting that the conferees be limited to the same 12 states,<sup>8</sup> (v) disagreement as to the zone of application of the proposed treaty, and (vi) whether or not provisions should be included to cover economic exploitation.

Despite the differences emerging during these preliminary discussions, considerable optimism prevailed, and on May 28, 1959, the Department of State formally announced that the Antarctic Treaty Conference would begin on October 15, 1959, in Washington.

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<sup>7</sup> Created in late 1957 by the International Council of Scientific Unions to facilitate post-I. G. Y. international scientific co-operation in Antarctica, this body has since had considerable success in continuing the co-operative spirit manifested during the I. G. Y. For a summary of I. G. Y. and post-I. G. Y. international conferences dealing with Antarctica see Hanessian, John, "Antarctica: Current National Interests and Legal Realities," Proceedings of the American Society of International Law, 1958, pp. 145-152. See also S. C. A. R. Bulletin published thrice yearly by the Scott Polar Research Institute, Cambridge, England.

<sup>8</sup> This question was raised explicitly on April 2, 1959, when the Polish Embassy in Washington sent simultaneous notes to all 12 participating governments describing Poland's "direct interest in Antarctic problems," and asking for the right to be included in the discussions. The request was based on the strength of the work accomplished by a Polish group of scientists who accompanied the Soviet Antarctic Expedition of 1958-1959. During that austral season, the USSR had formally transferred to Poland its "Oasis Station" in Antarctica on January 23, 1959. However, the Polish group remained only a few weeks before leaving the continent on the departing Soviet ships.



Although there was still no agreed draft treaty, the conference convened as planned. Following a welcoming address by Secretary of State Herter at the first plenary session, a number of important opening addresses were made by the heads of the various delegations. During these speeches opportunity was taken of the public forum to state traditional national positions regarding Antarctica.

Argentine Ambassador Adolfo Scilingo emphasized that the Conference had been called primarily to provide for the "exclusive peaceful use of Antarctica" and for the development of scientific co-operation in that region. He indicated his Government's strong feelings regarding the maintenance of the legal status quo: "This conference has not been convened to institute regimes or to create structures...it is not its mission to change or alter anything...nothing that is done here...will affect, or will disregard rights."

The delegate from Chile stressed the policy of his country that "Chilean Antarctic Territory does not have the character of a colonial possession, but is part of its metropolitan territory and forms part of its southernmost province." Chile could "not accept any formula that might imply the internationalization of its Antarctic territory...."

Australian Foreign Minister Casey, after taking the opportunity to review in detail the history of Australian Antarctic exploration, insisted that the chief mission of the conference was to ensure continuing scientific co-operation in Antarctica. The Belgian delegate limited his remarks to emphasizing the right of his country to attend the conference.

French Ambassador Pierre Charpentier, in addition to affirming France's "rights," gave "full approval" to "military neutralization of the Antarctic region," stating in his argument that "controlled military neutralization of the Antarctic should be instituted in the form of a convention...."

The general principles originally outlined by President Eisenhower in May 1958 were accepted without reservation by the Norwegian, South African, and New Zealand delegates. The latter referred to the several speeches during 1956-1959 made by Prime Minister Nash, advocating international action for Antarctica. New Zealand would even go further, he said (the only delegate to so commit his country). The New Zealand Government

"...would be prepared to consider the relinquishment of national rights and claims in Antarctica...the establishment of a completely international regime for Antarctica would require countries to forego their national claims...it is only on this basis that a fully effective administration of the whole of Antarctica could be achieved--an administration which could co-ordinate all activities and ensure the permanent neutralization of the area...."9



Vasili Kuznetsov, First Deputy Foreign Minister of the USSR, was the extremely co-operative head of the Soviet Delegation. He referred to the "historic" visit of Khrushchev to the United States as "an important contribution to the improvement of the international situation." He continued, saying that the Soviet Government "considers that there should be established in Antarctica an international regime that would contribute to the strengthening of peace." He emphasized the Soviet desire for nonmilitarization of Antarctica including a ban on "the testing of any types of weapons."

The United Kingdom was represented by Sir Esler Denning, who spoke in more specific terms than most of his colleagues. In his address he reiterated that the United Kingdom had "for many years been in favor of the conclusion of an agreement between countries actively interested in the Antarctic." He insisted on the preservation of the legal status quo as a necessary prerequisite for an international agreement, strongly urging non-militarization with the corollary establishment of a system of observation and inspection.

Sir Esler stated that "the treaty arrangements should be made as effective as possible...we therefore believe that the treaty should include firm provisions for such matters as jurisdiction and disputes between the parties."

The only delegate who stressed the complex legal problems facing the treaty conference was the Japanese delegate, Ambassador Koichiro Asakai. He pointed out that the drafting of the envisaged treaty would involve particularly complex and "novel elements in the realm of existing principles of international law" such as the freezing of territorial claims, nonmilitarization, the application of established principles of international law relating to territorial waters to the "complex actualities" of Antarctica, and the problems of criminal and civil jurisdiction. He concluded on an optimistic note:

"It will be the first time in history [that] such an attempt has been made on so large a scale and in an area so sparsely populated. Should we succeed here, we provide a hopeful precedent for the solution of one of the most important problems now facing the whole world...."<sup>10</sup>

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<sup>9</sup> "Opening Statement by New Zealand Representative," Conference on Antarctica, Document 6, Washington, October 15, 1959.

<sup>10</sup> "Statement of His Excellency Koichiro Asakai, Ambassador...of Japan to the United States, at the Opening Session...October 15, 1959," Conference on Antarctica, Document 7, Washington, October 15, 1959.



The Conference began with the election of Herman Phleger,<sup>11</sup> United States Delegation Head, as the permanent chairman. Two main working committees were organized under rotating chairmanship to deal with the items on the Conference agenda: (i) Committee on Scientific Problems, and (ii) Committee on Political and Legal Problems.

As with the earlier meetings, the deliberations of the conferees were held in complete privacy. Progress at first was rapid; it was announced on October 23 that general agreement had been reached on one of the basic principles of the forthcoming treaty--international co-operation in scientific research and the exchange of information about plans for scientific programs and personnel and of observations and results.

With the United States and Soviet delegations leading the way, early agreement was also reached on the principle of nonmilitarization together with an inspection system to assure against unauthorized military activity. Preliminary agreement was also attained on a new subject introduced late in the conference by the southern hemisphere nations: the banning of all nuclear explosions in Antarctica.

During the conference meetings major areas of contention centered around matters of jurisdiction and settlement of disputes, the area of geographical delimitation, and the provisions governing accession to the treaty.

Finally, on December 1, 1959, after some six weeks of intensive negotiations and hard bargaining, the Final Act and the completed Treaty were signed in Washington by all 12 participating nations. The event was immediately hailed by President Eisenhower as "an inspiring example of what can be accomplished by international co-operation...a significant advance toward the goal of a peaceful world with justice."

One of the most interesting aspects of the Treaty, which contains a preamble and 14 articles, is the revival of the principle of unanimity. Adopted in San Francisco in 1945 for use in the United Nations, this idea has suffered much in the past 15 years. In the Antarctic Treaty unanimous agreement is needed for approval of amendments, for the Treaty to come into force, for invitations to states nonmembers of the United Nations to accede to the Treaty, and for recommendations to be made by the consultative body established under Article IX.

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<sup>11</sup> Phleger was the Legal Adviser to the United States Department of State until 1957. When he assumed the Chairmanship, Paul C. Daniels became acting head of the United States Delegation. To Daniels, a long-time Foreign Service career man, must go most of the credit for successfully conducting the intricate 18-month-long preliminary negotiations. In 1957 he had been recalled from retirement by Secretary of State Dulles, who appointed him "Adviser on Antarctica" to the Department.



The provisions for nonmilitarization which are stated in Article I (i. e. "There shall be prohibited inter alia, any measure of a military nature. . . .") might well be used as prototype for future agreements on spatial problems as well as perhaps serving as the first step towards international agreement on such complex international problems as general disarmament.

An important exception to the principle of prohibition of all military activity is contained in Article I (2), which permits the use of military personnel and equipment in Antarctica so long as they are in support of "scientific research or for any other peaceful purpose." This provision is most important to the United States, which uses military ships, aircraft, and personnel for the logistic support of its Antarctic scientific program.

Several of the basic principles of the Treaty are found in Articles II and III, which call for "freedom of scientific investigation in Antarctica . . . as applied during the International Geophysical Year,"<sup>12</sup> and for the promotion of "international co-operation" in carrying out scientific programs in Antarctica, and for the free exchange of scientific personnel,<sup>13</sup> information, observations and results "to the greatest extent feasible and practicable."<sup>14</sup>

The reference to the establishment of co-operative relationships with United Nations specialized agencies and other international organizations included in Article III (2) is intended to promote the continued success of such arrangements as those currently existing with S. C. A. R. , the International Whaling Commission, the World Meteorological Organization, and the International Telecommunications Union.

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<sup>12</sup> As the only multilateral arrangements made in connection with the I. G. Y. were those agreed to by nongovernmental national delegations, usually representing national science academies, it is somewhat difficult to give a legal definition to the term "as applied during the International Geophysical Year." Although these agreements were concerned only with co-ordinative arrangements for the conduct of scientific programs, there was a more or less tacit agreement among all states participating in the I. G. Y. to keep out any discussions of a political nature. To a remarkable extent this policy was adhered to successfully.

<sup>13</sup> There has been considerable precedent during the I. G. Y. for the exchange of scientific observers, including a United States-Soviet Union arrangement, which continued for several years very successfully.

<sup>14</sup> The exchange of information on scientific observations and results is continuing today, on a nongovernmental level, through the World Data Centers established during the I. G. Y. In addition, S. C. A. R. provides an opportunity for the interchange of information concerning the post-I. G. Y. Antarctic programs of the various countries.



One of the most interesting concepts in the Treaty is that contained in Article IV. Instead of attempting to settle any of the several outstanding conflicting territorial claims in Antarctica, the Treaty effectively "freezes" the legal status quo. This Article, without which the completion of the Treaty would have been impossible, provides that there shall be no "renunciation by any contracting party of previously asserted rights of and claims to," or even "any basis of claim" to territorial sovereignty in Antarctica. In addition, no acts or activities during the course of the Treaty are to be used as a basis for strengthening present or potential claims. Finally, "no new claim or enlargement of an existing claim" is to be asserted while the Treaty is in force.

Although New Zealand and perhaps Norway were prepared to surrender their claims in order to effect the creation of strong international machinery, most of the other delegations represented at the Conference were not and so insisted that the Article be included in the Treaty. Neither the United States nor the Soviet Union objected to its inclusion. Although neither have ever asserted Antarctic claims, both have reserved their "rights" on several occasions, and these "rights" are now also protected.

As the Treaty does not attempt to solve this potential thorny problem, it might be argued that trouble is merely being postponed. However, it is the hope of many that this provision, to be in effect for at least 30 years, will ultimately permit the claims problem to wither away.

Although it would be inconsistent with the general intention of the signatory states, there does not appear to be any restriction in the Treaty to preclude two contracting parties from asserting a joint claim, or for all 12 to stake a claim to the entire continent. The latter possibility, which has occasionally been suggested in the past, may well be the ultimate solution for the future. It would be an effective way of sealing off the continent from activities by nonsignatory states in contravention to the principles of the Treaty.

At present one of the weakest aspects of the Treaty is that it has no effect whatever on nonsignatories. As the Treaty applies only to the 12 contracting states, there is nothing to prevent any other country from carrying on military activity or exploding nuclear weapons in Antarctica. It is, however, the hope of the 12 nations that many other countries will accede to the Treaty under the stipulations given in Article XIII--even if they fail to qualify to be "entitled to participate in the meetings provided for under Article IX," a right which is reserved only for the original 12 states plus those that qualify by "conducting substantial scientific research activity" in Antarctica (Article IX, 2).

All nuclear explosions in Antarctica and the disposal there of radioactive waste is prohibited under Article V, at least until such time as the conclusion of a general international convention on these subjects to which all the contracting parties must be signatory.



A unique aspect of the Treaty is the inspection system provided for under Article VII. Any signatory state is given the unilateral right to designate its own nationals as official observers. Each such observer "shall have complete freedom of access at any time to any or all areas of Antarctica, including all stations, equipment, ships, and aircraft discharging or embarking cargo or personnel in Antarctica. In addition aerial observation may be conducted at any time over any or all areas.

This provision, markedly stronger than any hitherto attempted, represents a significant achievement. It may well serve as a model for the future. In the past, the extremely detailed provisions of other inspection systems (as for example in Korea and Viet-Nam) have caused many frustrations.

One of the most troublesome issues facing the Treaty conferees was the problem of demarcating limits or the "zone of application" for the Treaty. Although the whole of the continent of Antarctica lies south of 60° South Latitude, a number of islands, normally connected with Antarctic research and exploration, are located considerably further north.

The United Kingdom has always been anxious concerning the islands located near the 1,100 kilometer wide Drake Passage off the tip of South America, such as the South Shetlands (claimed by Britain, Argentina, and Chile), the South Orkneys (claimed by Britain and Argentina) as well as South Georgia, a little further east.

A complicating factor has always been that geographers have never been able to agree on a precise definition of "Antarctica." The term "Antarctic Circle" (at 66° 32' South Latitude) has little use in this context, especially as a part of the Antarctic mainland lies to the north of the Circle. Some would limit the area to the mainland plus the closely lying offshore islands, others would use the limits bounded by the oceanographic term "Antarctic Convergence," and still others would include all sub-Antarctic islands.

After considerable discussion, the "zone of application" was fixed in Article VI to include "the area south of 60° South Latitude, including all ice shelves," but not the high seas. Thus the Treaty includes the South Shetlands, the South Orkneys, but omits the disputed Falkland Islands and the following major sub-Antarctic islands: South Sandwich, South Georgia, Kerguelen, Marion, Macquarie, Heard, Campbell, Bouvet, Gough, and Crozet.

Ice shelves (some of which are thousands of square kilometers in extent) were carefully included in Article VI, as several of the stations, currently being operated, are situated on them. These ice shelves, the legal character of which has never been determined, although reaching thicknesses of 300 meters, are essentially floating in the water, in much the same manner as icebergs, except that they are "attached" to the continental shore.



Questions of jurisdiction are covered under Article VIII. Official observers and exchanged scientific personnel together with their staffs "shall be subject only to the jurisdiction of the contracting state of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica, for the purpose of exercising their functions."

This provision neatly avoids any solution of the old questions as to what law operates and what courts have jurisdiction over criminal and civil offenses committed by a national of one contracting party against a national of another, or indeed against a national of a nonsignatory country. Thus, jurisdiction over the great body of scientific and support personnel at Antarctic stations continues to be exercised by the state controlling a given station.

Pending the adoption of further measures, the contracting parties, in the case of a dispute with regard to the exercise of jurisdiction in Antarctica, are required to "immediately consult together with a view to reaching a mutually acceptable solution" (Article VIII, 2). These "questions relating to the exercise of jurisdiction in Antarctica" are to be discussed by representatives of the signatory states at the Canberra meetings provided for under Article IX (1).

If a dispute arises between two or more of the contracting parties "concerning the interpretation or application of the present Treaty," the contracting parties, under Article XI, are required to try to resolve it "by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, or other peaceful means of their own choice."

Should this procedure be unsuccessful, the issue can be referred to the International Court of Justice--but only "with the consent... of all parties to the dispute." If there is failure to reach agreement on reference to the Court, the parties are asked to continue "to seek to resolve" the dispute. Thus, little progress is made toward the goal of mandatory reference to the International Court, which many feel is so important to the future peaceful conduct of international relations.

Administrative machinery is provided under Article IX. Considerably weaker than that hoped for by some delegations, the arrangement was all that could be mutually agreed to during the Conference. To be established is a consultative group, composed of representatives from the 12 countries. The body, which has not been given a name, is designated authority merely for "the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their governments, measures in furtherance of the principles and objectives of the Treaty..." Even to make "recommendations," unanimous agreement is required, and such recommendations are to become effective only if ratified by each and every signatory Government.



Subject matter for these discussions is to include the following: "(a) use of Antarctica for peaceful purposes only; (b) facilitation of scientific research in Antarctica; (c) facilitation of international scientific cooperation in Antarctica; (d) facilitation of the exercise of the rights of inspection provided for in Article VII of the Treaty; (e) questions relating to the exercise of jurisdiction in Antarctica; (f) preservation and conservation of living resources in Antarctica."

Representatives of the 12 original signatories are to meet at "suitable intervals and places," beginning with Canberra, within two months of the entry into force of the Treaty.

Additional states acceding to the Treaty are allowed to participate in these meetings only during the period in which they demonstrate their interest in Antarctica "by conducting substantial scientific research activity there, such as the establishment of a scientific station or the dispatch of a scientific expedition." Although not specifically stated, this is usually taken to mean the establishment and operation of a year-round station on the Antarctic continent. Presumably, the conduct of a single expedition, limited to a few weeks during one austral summer, would be insufficient for membership.

During the Conference, prolonged contention resulted over the problem of accession to the Treaty. Some delegations, such as those of the United Kingdom and the USSR, were in favor of a broad accession policy, while others, such as Australia, were inclined to favor a more limited membership. There was some talk of following the formula used in many multilateral conventions concluded under United Nations auspices --the opening of the Treaty to accession by all "like-minded" countries (i. e., members of the United Nations or its Specialized Agencies).

Finally, a modified version of this latter approach was adopted. Under Article XIII (1) the Treaty is to be open for accession "by any State, which is a member of the United Nations, or by any other State which may be invited to accede to the Treaty with the consent of all the Contracting Parties...."

It is required under Article X that each contracting country "exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present Treaty." The term "no one" would appear to be somewhat broad. It is difficult to interpret just what obligation a signatory state has, if it observes another state committing an action contrary to the principles of the Treaty, other than bringing the matter up for group discussion by the Article IX group. If the offender is a nonsignatory state, nothing can be done except to bring the matter to the attention of the United Nations.



This brings to attention a significant weakness of the Treaty: the absence of sanctions applicable to a signatory state which violates any of the Treaty provisions. It is unlikely that the Treaty will collapse in such an eventuality. More probable would be an attempt to discuss the problem by the consultative group, and failing there, to exclude the offender from further co-operation within the Treaty area.

A more complex question is raised if one group of contracting parties makes a further agreement--for example with respect to the exploitation of mineral resources--which is opposed by the remaining contracting parties. Again, other than group discussion, there is little that can be done. Although the Treaty would not be violated technically by such an action, the spirit of co-operation envisaged by the Treaty-makers would be considerably weakened, and the Treaty itself rendered ineffectual.

The Treaty may be modified or amended at any time, under Article XII, by unanimous agreement among the contracting parties, whose representatives are entitled to participate in the meetings provided for under Article IX. Any other contracting party has the option of either ratifying the amendment within two years or of withdrawing from the Treaty.

The Treaty will enter into force only after unanimous ratification by all signatories. As no termination date is given, the Treaty will remain in force indefinitely. But, after 30 years, any of the contracting parties has the right to request a conference of all signatories to review the Treaty. If a change proposed at that time is rejected, any state can withdraw from the Treaty four years later.

During the present period, while the Governments are in the process of ratifying the Treaty (it is expected that all ratifications will be received by mid-1961), representatives of the 12 nations are already meeting (in Washington) as provided for in the Final Act of the Conference. Considerable optimism prevails. As Soviet representative Kuznetsov stated at the signing of the Treaty: "This Treaty...is an additional evidence of the fact that States, if they are ready to co-operate, can successfully achieve through negotiation mutually acceptable solutions of international problems in the interest of universal peace and progress."

J. H., Jr.



